IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 20393 OF 2005

Date: 28.09.2005

BETWEEN:

Smt. J. Lalitha

.... PETITIONER

And

1. The Government of Andhra Pradesh, rep. by its Principal Secretary, Home Department, and others.

.... RESPONDENTS

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO. 20393 OF 2005

ORDER:

The petitioner is the owner of Cinema Theatre complex in Moosapet village, within the jurisdiction of Kukatpalli Municipality, the third respondent herein. She also constructed M/s. Laxmikala and Sashikala 70 mm A.C. theatres. To construct third theatre in the complex, she approached the second respondent for permission under Rules 8 and 9 of A.P. Cinema (Regulation) Rules, 1970 (for short 'the Rules'), but the same was refused. Aggrieved by the same, the petitioner approached the first respondent by way of an appeal, who by order in G.O.Rt.No.64, dated 15.1.2003 granted permission for construction of third theatre on pillars in the space available in the existing theatre complex. The petitioner accordingly took up construction. The second respondent has therefore granted permission subject to petitioner's compliance of the conditions. Be that as it is, when the petitioner was constructing the theatre, the third respondent issued a notice dated 29.8.2005 purporting to be under Section 228(1) of A.P. Municipalities Act, 1965 (for short 'the Municipalities Act')

alleging that the petitioner erected pillars for construction of additional theatre without any permission from the Municipality or HUDA, and the same is against the Rules. The preliminary order under Section 228(1) of the Municipalities Act was followed by the confirmatory orders dated 5.9.2005 calling upon the petitioner to remove by demolition felling or otherwise of the un-authorised construction, within three days. Assailing the same, the present writ petition is filed.

At the stage of admission itself the learned Standing Counsel for the third respondent has filed counter affidavit stating that the petitioner submitted explanation on 6.9.2005, which is not satisfactory, and that the No Objection Certificate produced by the petitioner was issued in 1994, which has no bearing. The power of municipality to issue the impugned notice is traced to Section 228 of Municipalities Act.

Section 6 of the A.P. Cinemas (Regulation) Act, 1955 is to the effect that Hyderabad Municipal Corporations Act, 1955, and A.P. (Andhra Area) District Municipalities Act, 1920, and A.P. (Andhra Area) Town Planning Act, 1920 shall have no application to the construction or reconstruction of any building to be used exclusively for holding of Cinematograph Exhibitions, that is to say a Cinema Theatre. In this case the petitioner has obtained necessary permission under the Rules from the second respondent, and therefore, when he is making any construction no power vests in the Municipality, the third respondent herein to interdict such construction. If the petitioner allegedly violates any conditions, it shall always be open to the Municipal Commissioner to address the Joint Collector for appropriate action, but issue of notice under Sections 228(1) and 228 (3) of the Municipalities Act is ex facie without jurisdiction.

The learned Standing Counsel for the third respondent placed reliance on the Memorandum No.10266/M1/2001, Municipal Administration, dated 12.6.2001 issued by the Government of Andhra Pradesh in support of the submission that though the third respondent Municipality is entitled to collect betterment charges as per the Municipalities Act, the petitioner has not paid any amount as betterment charges. The learned counsel however, has not produced before this Court any notice of payment of betterment charges by the petitioner. In the absence of any such payment, it would not be proper for the Commissioner to stop construction of Cinema Theatre or to direct demolition of Cinema Theatre, which the petitioner is admittedly took up after obtaining necessary permission under the provisions of Cinematograph Rules. If so advised, it shall be open to the third respondent to serve a notice for payment of betterment charges.

In the result, for the above reasons, the Writ Petition is allowed at the admission stage and the two impugned notices are set aside.

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(**V.V.S. RAO, J.)**

28th September, 2005

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